



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

PFD-0301

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on \_\_\_\_\_

Signature \_\_\_\_\_

Typed or printed name LAURA P. HANSEN

Application Number

10/624 661

Filed

7/22/2003

First Named Inventor

Shellans

Art Unit

2635

Examiner

Shimizu, MATSUICHO

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record.

Registration number 38170

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

Dale B. Halling

Typed or printed name

719-447-1990

Telephone number

12/15/05

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Shellans EXAMINER: Shimizu, Matsuichiro

SERIAL NO.: 10/624,661 GROUP: 2635

FILED: July 22, 2003 CASE NO.: PFD-0301

ENTITLED: Tagging and Tracking System

100

Law Offices of Dale B. Halling  
655 Southpointe Ct., Suite

Colorado Springs, CO 80906  
December 15, 2005

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Remarks

Status of the Claims

Claims 1-20 are at issue. Claims 8-10 & 12 stand rejected under 35 USC 102(b) as being anticipated by Pidwerbetsky et al (6,084,530). Claims 1-7 & 15-20 stand rejected under 35 USC 103(a) as being unpatentable over Pidwerbetsky in view of Seal (6,396,438). Claim 13 stands rejected under 35 USC 103(a) as being unpatentable over Pidwerbetsky in view of Mish (6,025,784). Claim 14 stands rejected under 35 USC 103(a) as being

unpatentable over Pidwerbetsky in view of Mish and further in view of Shaw (6,563,417).

### Clear Issues for Review

#### I. The Prior Art does not show or suggest every element in claims 8-10 & 12

Claim 8 requires a reflected signal. Pidwerbetsky does not show modulating a reflected signal<sup>1</sup>. See FIG. 2 of the present application to see how the reflected signal is modulated.

Pidwerbetsky is directed to a system using RFID tags. The tag (see FIG. 3) receives an information signal from the interrogator 103 (Fig. 2). The tag does a normal RF detection (see 301, 302, 303, etc) and then responds with its own information signal 306 that modulates a carrier 308 and is transmitted over antenna 301. The present application modulates a reflected signal as opposed to transmitting a new signal. Note that the modulating tag 16 (Fig. 2) has a plurality of conductive traces 42 that are connected by switches 44. Modulation of the reflected signal is achieved by changing the reflective properties of the tag 16 (See pages 5, 6, lines 23-29 & 1-2). Note that there is no detector or clock recovery. In fact the tag does not receive an information signal. These differences are clearly pointed out in the claims. Claim 8 is allowable.

Claim 9 requires the reflected signal to be phase modulated. Phase modulation of the reflected signal is not shown in Pidwerbetsky or Seal. Claim 9 is allowable.

---

<sup>1</sup> Pidwerbetsky does use the phrase "backscatter modulator" or MBS but the discussion is clearly about modulating the signal 308 generated by the tag, not the reflected signal.

Claims 10 & 12 are allowable as being dependent upon an allowable base claim.

II. The references, taken as a whole, do not suggest the invention to one of ordinary skill in the art as defined in claims 1-7 & 15-20.

Claim 1 requires an information signal on a reflection of the output. Neither Pidwerbetsky or Seal show modulating a reflected signal<sup>2</sup>. See FIG. 2 of the present application to see how the reflected signal is modulated.

Both Pidwerbetsky and Seal are directed to RFID tags. RFID tags do not modulate a reflected signal, they transmit a signal in response to a polling/energizing signal. Both references are inapplicable to the present invention. Claim 1 is allowable.

Claims 2, 4, 6 & 7 are allowable as being dependent upon an allowable base claim.

Claim 3 requires a periodic signal. See the explanation on page 7, lines 9-16 (FIG. 4) which clearly explains that the modulation of the reflected signal is a periodic signal since the tag does not know when it will be illuminated. The Examiner points to modulation schemes such as BPSK etc. This is not the information signal, this is just how the information signal is modulated. There is no discussion of a periodic signal in Pidwerbetsky, because this would not make sense in his case. The RFID tag receives an information signal from the interrogator and then responds. In the present application, the tag does not receive an information signal from the transmitter it just reflects the incident light wave. Claim 3 is allowable.

Claim 5 requires the signal is modulated by changing its polarization. The portion of Seal pointed to by the Examiner just sets the polarization, it does not

---

<sup>2</sup> Pidwerbetsky does use the phrase "backscatter modulator" or MBS but the discussion is clearly about modulating the signal 308 generated by the tag, not the reflected signal.

change the polarization to encode information onto the signal. Clearly claim 5 is allowable over the prior art.

Claim 15 requires a reflected signal. Neither Pidwerbetsky or Seal show modulating a reflected signal<sup>3</sup>. See FIG. 2 of the present application to see how the reflected signal is modulated. Claim 15 is allowable.

Claims 16, 18 & 20 are allowable as being dependent upon an allowable base claim.

Claim 17 requires sending a tamper signal. The Examiner points to Seal element 1410. The only statement in Seal is that the tamper detector is a switch. It does not state that it sends a tamper signal. The switch probably turns off the transponder. This is not a tamper signal. Claim 17 is allowable.

Claims 19 requires a periodic signal. See the explanation on page 7, lines 9-16 (FIG. 4) which clearly explain that the modulation of the reflected signal is a periodic signal since the tag does not know when it will be illuminated. The Examiner points to modulation schemes such as BPSK etc. This is not the information signal, this is just how the information signal is modulated. There is no discussion of a periodic signal in Pidwerbetsky, because this would not make sense in his case. The RFID tag receives an information signal from the interrogator and then responds. In the present application, the tag does not receive an information signal from the transmitter it just reflects the incident light wave. Claim 19 is allowable.

Claims 13 & 14 are allowable as being dependent upon an allowable base claim.

---

<sup>3</sup> Pidwerbetsky does use the phrase "backscatter modulator" or MBS but the discussion is clearly about modulating the signal 308 generated by the tag, not the reflected signal.

Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

(Shellans)

By Dale B. Halling

Attorney for the Applicant

Dale B. Halling  
Reg. No.: 38,170  
Customer No. 25,007  
Phone: (719) 447-1990  
Fax: (719) 447-0983